

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office August 17, 2007, the Office rejected claims 18 and 19 under 35 U.S.C. 101; claims 1-10 were rejected under 35 U.S.C. 112, second paragraph; claims 1-4, 6-16, 18 and 19 were rejected under 35 U.S.C. 102(a) as being anticipated by Lee et al. (US Pub. No. 2003/0123680); and claims 5 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US Pub. No. 2003/0123680 A1) in view of Albrecht et al. (US Pat. No. 5,755,671).

CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Claims 18 and 19 stand rejected under 35 U.S.C. § 101. The pending Action indicates that claims 18 and 19 are directed to computer program but that the claims do not expressly or implicitly require performance of any steps by a machine, such as a general purpose computer. The pending Action lays out several tests utilized under § 101 to determine whether the subject matter of the claims is statutory subject matter, including (1) a process under 35 U.S.C. § 101 requires a transformation of physical subject matter, tangible or intangible to a different state or thing; (2) the “abstract idea” exception; and (3) the claim must recite a practical application that is useful, concrete and tangible. Applicant respectfully notes that the computer program utilized in claims 18 and 19 produce audio output substantially corresponding to that to and greater than a temporal ambient noise map. Accordingly, each of claims 18 and 19 provide for the production of a useful, concrete, tangible result, the production of audio output. Accordingly, Applicant respectfully requests that the § 101 rejection be withdrawn at this time.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 1-10 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. In particular, the Action indicates that claims 1-3 and 5 are unclear because the only structural element as claimed in claims 1-3 and 5 cannot perform the function as the temporal volume control device. The Action particularly indicates that the temporal ambient noise map and audio output component are separate structures and therefore is not clear what the subject matter is that the Applicant regards as the invention. Applicant respectfully submits that the nature of the rejection is unclear. In an effort to be responsive to the Examiner's concerns, however, Applicant submits that each of the ambient noise map and the audio output map are elements of the temporal volume control device the Applicant regards as its invention. In particular, the ambient noise map is utilized as an element in the process or system for producing audio output that has a temporal control element. Accordingly, Applicant regards the temporal volume control device comprising an audio output component and a temporal ambient noise map as its invention and respectfully requests that the § 112 rejection be withdrawn at this time.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102 § 103

M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. "To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131 states further,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . . "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits that the reference cited by the Examiner fails to teach every element of the claim set as provided herein for the following reasons. In particular,

independent claim 1 recites limitations for a temporal volume control device comprising: an audio output component for receiving information corresponding to a temporal ambient noise map and producing an audio volume level substantially corresponding to and greater than said temporal ambient noise map, said temporal ambient noise map comprising at least one ambient noise value corresponding to a time value for at least one period of time.

Lee does not teach the generation of a temporal ambient noise map. Lee's abstract provides that "a noise sensor senses the external noise and a micro controller calculates an average of the external noise for a predetermined period of time and adjusts the volume level controller based on a predetermined volume setup table, which lists volume levels corresponding to levels of the external noise. Alternatively, the micro controller calculates an average noise level for a current predetermined period of time and adjusts the volume level controller based on comparing the current calculated average noise with a calculated average noise for a previous predetermined period of time. Lee measures for a short period of time and creates an average and then broadcasts louder. The present claims are drawn to an invention, which creates a temporal ambient noise map and broadcasts louder than the predicted value in any given time slot. Accordingly, Lee fails to teach or fairly suggest each of the claim limitations found in the presently presented claim set.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,



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